



**U.S. Department of Justice
Office of the United States Trustee**

Region 2 - New York, Connecticut and Vermont

TO: Debtors-in-Possession and Trustees

FROM: DIANA G. ADAMS
ACTING UNITED STATES TRUSTEE

RE: Operating Guidelines and Financial Reporting Requirements

These Guidelines apply to all cases under Chapters 11 and 12, and cases with operating businesses under Chapters 7, 11, 12 and 13 of the Bankruptcy Code.

In furtherance of the duties imposed on the United States Trustee by 28 U.S.C. 586(a)(3), and in accordance with 11 U.S.C. §704(8) and Federal Rule of Bankruptcy Procedure 2015, trustees and debtors-in-possession (11 U.S.C. §721 or §1108) are required, as of the date of the filing of a petition commencing a case, to comply with the following guidelines relating to the opening and maintenance of bank accounts and the filing of periodic reports with the Court and transmittal to the United States Trustee.

INITIAL DEBTOR INTERVIEW

In many cases, within a week of a Chapter 11 filing, the Office of the United States Trustee will contact the debtor's attorney to schedule an "initial debtor interview." This meeting should be attended by counsel, principal of the debtor, and any other person who will be providing post-petition financial services or otherwise play a significant role in managing the debtor's affairs. The purpose of this meeting is to familiarize the staff of the United States Trustee with the debtor's business, to collect required data and to review with the debtor these guidelines. At the conference, the debtor is required to furnish the following documentation and such other information as requested in correspondence scheduling the meeting. **If no initial debtor interview is held, such materials must be provided to the United States Trustee within ten days after the case is filed.**

1. Copy of the debtor's last two filed income tax returns, including all applicable schedules..
2. Copy of the most recently issued or prepared financial statement.
3. A schedule of aged accounts receivable .
4. Specimen (voided) checks which verify the opening of "debtor in possession" bank accounts (see "Bank Accounts"), and a listing of the authorized signatories (not the signature card).
5. Proof that all applicable insurance is in place, as set forth below.

6. A listing of all disbursements for the ninety days prior to the filing, which may take the form of a check register for an individual.

BOOKS AND RECORDS

Unless otherwise ordered by the court, the debtor's books must be closed as of the petition date and new books opened. The old books and records must be retained and be available to the United States Trustee.

BANK ACCOUNTS

(a) In General

Unless otherwise ordered by the Court, any bank account over which the debtor has possession or control must be closed immediately upon the filing of the petition. The debtor shall immediately open two new bank accounts, an operating account and a tax account, both of which should clearly be designated and titled as debtor-in-possession accounts, including bearing the notation "debtor-in-possession" or "DIP" and the case number on all checks for the new accounts. The new operating account shall be used to process all post-petition receipts and disbursements from operations of the business, and the new tax account must be used for the deposit of all funds (including but not limited to funds held in trust for employee's withholding taxes, sales taxes, employer contributions, and any other taxes) as may be collected and/or payable during the pendency of the case. A bank in which those accounts are maintained must be in compliance with the provisions of 11 U.S.C. 345 -- fully FDIC insured, and, to the extent deposits will exceed the FDIC coverage, located in an approved depository. A list of approved depositories is enclosed.

Within ten days of the petition, the debtor must provide the United States Trustee with a sworn statement describing all pre-petition accounts by depository name, account number and account name. The debtor shall verify that all pre-petition accounts have been closed.

(b) Tax Accounts

Deposits of withholding and sales taxes shall be made as follows:

- I. Within two business days from the date on which salaries are paid to employees:
 - a. Deposit that portion of such salaries as is required to be withheld for federal, state and local taxes and for social security, and
 - b. Deposit the employer's portion of social security and disability and unemployment insurance.
- II. In those cases in which a debtor (or debtor's business) is required to collect sales taxes, such taxes must be deposited in the tax account not later than the Monday following each business week for that week's tax liability; and

III. Any other taxes which the debtor is required to collect, or for which it incurs liability in the ordinary course of the operation of its business (such as federal excise taxes, property taxes, rental taxes, etc.) must be deposited into this tax account no later than Wednesday of the week following the week in which such taxes were collected or in which the liability was incurred.

INSURANCE

Within ten days after the entry of the order for relief, the debtor-in-possession or trustee shall supply to the United States Trustee adequate proof that the debtor has all appropriate insurance coverage. This proof may be in the form of a copy of a binder or current policy. The insurance coverage should include such items as loss due to fire, theft, business interruption, workers' compensation, liability, flood, vehicle, product liability, and any other insurance that is customary in the particular business or required by law. Any notice of cancellation of any insurance policy maintained by the debtor-in-possession must be reported to the United States Trustee within three (3) days after receipt.

MONTHLY FINANCIAL STATEMENTS

(a) Filing Requirements¹

All debtors-in-possession, Chapter 11 trustees and Chapter 7 trustees who are authorized to operate businesses are required to submit verified, with an **original signature² on the original and copy**, monthly financial statements and operating reports (described below). **Notwithstanding local ECF requirements, the United States Trustee will not accept service of the operating reports via electronic transmission.** The original financial statement is to be filed directly with the Bankruptcy Court with a copy simultaneously transmitted to the United States Trustee's Office. A copy should also be sent to the creditors committee, if one has been appointed in the case. Compliance with Local Rules and filing procedures in each jurisdiction is required. Each operating report must contain a cover sheet showing the name of the debtor, the case number, the preparer, and the name of the debtor's attorney. Each verification must clearly state that it is under penalty of perjury, and must be properly dated and signed by the debtor.

Financial statements shall be submitted as soon after the end of the month as is possible and in no event later than the 15th day following the end of each calendar month. Such statements shall disclose all transactions of the calendar month immediately preceding the due date. The first report shall

¹These reports must be filed each month, whether or not the business is operating, until a plan is confirmed by the Court, the case converts to Chapter 7 and is not operating, or an order is entered dismissing the case.

²In districts with ECF, the signature filed with the Court will be reflected in the manner required by the Court. The copy served upon the United States Trustee must contain the actual signature.

include all transactions for the period of the first month the debtor is in bankruptcy. It is recognized that in almost all cases, this first report will only be for a partial month. **Please do not combine this report with that of the first full month.**

(b) Content of Financial Statements

The United States Trustee's office will rely primarily on the complexity and nature of the debtor's business in determining what type of financial reporting is adequate. If the business is a relatively large corporation or involved in certain industries (manufacturing, construction, etc.) the required monthly financial statement must include:

a. A balance sheet, which shall include total assets (such as cash, accounts receivable, and plant, property & equipment), total liabilities, and total equity or negative equity. There shall be a description of accounts payable³ and accounts receivable, where appropriate. Liabilities shall be classified as those which are pre-petition, and those which are post-petition. Pre-petition liabilities should distinguish those which are subject to compromise from those not subject to compromise. Post-petition liabilities should distinguish transactions and events that are directly associated with the reorganization from the ongoing operations of the business.

b. An accrual basis profit and loss statement.

c. An aged listing of accounts receivable at month end, showing customer name, amount due, due date and an indication of pre- or post-petition nature of the receivable balance.

d. An aged accounts payable listing at month end for all post-petition debts incurred, indicating vendor name, amount owed, and due date, and a statement clearly identifying all overdue bills.

e. A detailed schedule of all wages paid including payroll taxes withheld and incurred, and a schedule of all remittances made to taxing agencies during the month.

f. A detailed schedule of all other taxes collected and incurred and a schedule of all remittances made on such taxes.

g. A cash receipts and disbursements journal.

³This applies to third-party transactions such as trade payables and notes payable. Transactions with related parties, inter-company transfers etc., should be segregated. Any items which are disputed, or which have financially significant terms, conditions or covenants should be explained. Pre-petition liabilities should also be segregated for presentation and disclosure purposes during the pendency of the case. Any transaction affecting the balance of the pre-petition receivables should be fully explained.

In less complex cases (such as individuals with a d/b/a, small restaurant/bar operations, etc.), an cash basis income statement may be substituted for the accrual basis statement. Debtors should be advised that the modification for the accrual basis statement will not release the debtor from providing (1) the accrual basis information on accounts receivables, (2) the accrual basis information on accounts payable, and (3) the tax and inventory reporting requirement.

(c) Attachments to Financial Statement

The debtor-in-possession is also required to attach to the financial statement a photocopy of each month's bank statements. If bank statements are not available at the time the financial statement is filed, they should be submitted separately, as soon as the DIP receives them. A bank reconciliation should be prepared and attached to the operating report. All disbursements must be made by pre-numbered check. Counter checks are prohibited.

WAIVER OR MODIFICATION OF REPORTING REQUIREMENTS

The reporting requirements of the United States Trustee's office may be waived or modified only after a request in writing demonstrating sufficient cause for the requested action, and specifying what alternative is to be provided (i.e., the form and detail) for reporting on that estate. No waiver or modification shall be effective unless in writing and signed by the United States Trustee or an authorized delegate.

DISCLOSURE REQUIREMENTS

A mere compilation report and even a "review", without adequate disclosure, does not comply with these operating report requirements. The United States Trustee's office recognizes that each debtor-in-possession is different and that the ability of a debtor-in-possession to comply with the monthly reporting requirements also may vary. Thus, counsel should feel free to advise this office if and when their clients find it burdensome or otherwise difficult to provide the requested information and to indicate the type of financial statements the debtor-in-possession can provide, the form of such reports, and the timing. While the United States Trustee is willing to consider, on the basis of the facts of each case, any reasonable alternative that the debtor-in-possession may wish to propose, we need to receive, at a minimum, enough information to allow this office to ascertain the viability of each debtor-in-possession.

ANNUAL FINANCIAL STATEMENTS

All debtors-in-possession, and any trustees who operate a business, are required to submit annual financial statements. The statements are to be submitted to the United States Trustee in duplicate (with a copy to the creditors' committee, if any), no later than 90 days after the close of the debtor's fiscal year, or taxable year (if a short tax year election is made pursuant to Internal Revenue Code Section 1398(d)(2)). These annual financial statements should be prepared, to the extent possible, in accordance with generally accepted accounting principles (including GAAP disclosure requirements), and should include the following information:

- a. A balance sheet with comparative figures for the prior fiscal year.
- b. A profit and loss statement with comparative figures for the prior fiscal year.
- c. A copy of form 10K for the period, for a publicly-held corporation.

A copy of any communication sent to this office concerning compliance with the financial reporting requirements should also be served on the creditors' committee, if any. Questions regarding these guidelines should be addressed to the United States Trustee attorney or analyst handling the case.

Failure to comply with the requirements set forth in these guidelines may result in a motion by the United States Trustee seeking conversion or dismissal of the debtor's bankruptcy case.

EMPLOYMENT OF PRINCIPALS AND PROFESSIONALS

Pursuant to 11 U.S.C. §327 and Bankruptcy Rule 2014, the debtor-in-possession or trustee must apply for an order of the Court approving the employment of professionals. A copy of any application to employ or compensate a professional (including, but not limited to, lawyers, accountants, financial advisors, appraisers, auctioneers, and consultants) must be served upon the United States Trustee. Applications to employ such persons must be filed, and an order approving such employment must be entered, prior to any services being rendered to the debtor.

Each applicant's affidavit must disclose any relationship or contact applicant has with the debtor, any creditor, party in interest, their attorneys and accountants, and employees of the United States Trustee. A general statement that the applicant is disinterested and does not represent an interest adverse to the estate is insufficient.

No later than the date of the first meeting of creditors, the debtor shall provide the following information regarding employment and compensation of its principals: name and position of the individual; detailed description of the duties and responsibilities; reasons why employment of the individual is necessary for successful reorganization; details of the compensation sought; details of any other benefits or consideration to be received, including but not limited to use of vehicles, housing, expense reimbursement, insurance, and pension or profit sharing; and, each individual's salary and benefit history for the year immediately preceding the filing of the petition.

CHANGE OF ADDRESS

It is the debtor's responsibility to notify the United States Trustee and the Bankruptcy Court of any change of address or telephone number within ten days of the change. Notice to the Clerk and the United States Trustee must be in writing. The debtor may not receive notice of actions taken in the case if the debtor fails to provide proper notice to the Clerk and the United States Trustee.

ADDITIONAL NOTICE REQUIREMENTS

The United States Trustee must be advised immediately of any significant change in debtor's business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to the failure to pay taxes, which could affect the continued operation of the debtor's business.

QUARTERLY FEES

Debtors in Chapter 11 cases must pay a quarterly fee to the United States Trustee for each calendar quarter, or portion thereof, between the date of filing the petition and the entry of the final decree, dismissal, or conversion of the case. **The debtor must file with the Court and serve on the United States Trustee a statement of disbursements for each calendar quarter. See FRBP 2015(a). The statement must be filed no later than one month following the end of each calendar quarter. There is no proration of the fee.**

The debtor is responsible for timely payment of the quarterly fee. Failure to receive a bill from the Executive Office for United States Trustees does not excuse the debtor from timely payment. The quarterly fee is based upon the debtor's disbursements during each calendar quarter and is calculated according to the following table:

TOTAL QUARTERLY DISBURSEMENTS ⁴			QUARTERLY FEE
\$0.00	to	\$14,999.99	\$250.00
\$15,000.00	to	\$74,999.99	\$500.00
\$75,000.00	to	\$149,999.99	\$750.00
\$150,000.00	to	\$224,999.99	\$1,250.00
\$225,000.00	to	\$299,999.99	\$1,500.00
\$300,000.00	to	\$999,999.99	\$3,750.00
\$1,000,000.00	to	\$1,999,999.99	\$5,000.00
\$2,000,000.00	to	\$2,999,999.99	\$7,500.00
\$3,000,000.00	to	\$4,999,999.99	\$8,000.00
\$5,000,000.00	and	more	\$10,000.00

A minimum fee of \$250.00 is due even if there are no disbursements during a calendar quarter.

⁴Disbursements made by a receiver or a third party for the benefit of the debtor are included as disbursements for computing quarterly fees. In confirmed chapter 11 cases, disbursements include both payments made pursuant to the plan and payments made by the reorganized debtor.

Quarterly fees are due no later than one month following the end of each calendar quarter. Failure to pay quarterly fees may result in the conversion or dismissal of the case. Payment of that quarter's fees and any past due fees must be made before the effective date of a confirmed Plan of Reorganization and quarterly fees will continue to accrue until entry of the final decree, or until the case is converted or dismissed. Failure to pay these fees may result in a motion by the United States Trustee to convert the case to a Chapter 7 case.

Quarterly fees should be mailed with the proper transmittal form to:

**United States Trustee Payment Center
P.O. Box 198246
Atlanta, GA 30384**

The address shown above is a lockbox at a bank. It may NOT be used for service of process, correspondence or any purpose other than payment of quarterly fees.

If you do not have the proper form, or do not timely receive a bill for quarterly fees from the Executive Office for United States Trustees, contact the Office of the United States Trustee for your district immediately.

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER

Pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. §3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number (TIN) as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceeding for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

**AMENDMENTS TO OPERATING REQUIREMENTS
and
SOLICITATION OF COMMENTS AND SUGGESTIONS**

The United States Trustee reserves the right to revise, modify or amend these guidelines and requirements from time to time, and as is appropriate in an individual case. Comments or suggestions regarding these guidelines or other policies and procedures of the Office of The United States Trustee are sought and appreciated and should be directed to the United States Trustee for Region 2 at the address shown below:

**DIANA G. ADAMS
ACTING UNITED STATES TRUSTEE
REGION 2
33 Whitehall Street, 21st Floor
New York, NY 10004-2112**